HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

and

HONOURABLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT APPEAL NO :2134 of 2005

Between:

Asghar Ali Khan, S/o. Subhan Ali Khan, R/o. H.No. 20-4-146/1 & 4, Shah Ali Banda Road, Hyderabad.

..... APPELLANT

AND

The Commissioner, Municipal Corporation of Hyderabad, Office at Tank Bund, Hyderabad and others.

::JUDGMENT::

Counsel for the Appellant : Mr. M.BASITH ALI YAVAR

Counsel for the Respondent Nos.1 and 3 : Mr. Ghanta Rama Rao

Counsel for the Respondent No.2 : Mr. P. Harinatha Gupta

15th December, 2005

-

-

-

-

-

-

HCJ & CYSJ

W.A.No.2134 of 2005

Per G.S. Singhvi, CJ

Feeling dissatisfied with the order dated 26.9.2005 passed by the learned Single Judge whereby he partly allowed Writ Petition No. 20615 of 2005 filed by the appellant and restrained the respondents from demolishing his property bearing Municipal
No. 20-4-146/2 and 20-4-146/3 situated at Sha-Ali-Banda road, without acquiring the same in accordance with the provisions of law, the appellant has filed this appeal under Clause 15 of the Letters Patent.

Learned counsel for the appellant argued that even though in the writ petition, his client had made a specific prayer for issuing of a direction for allotment of alternative site in terms of order dated 19.6.1987 passed in Writ Petition No. 16705 of 1986, the same has not been considered by the learned Single Judge and this has resulted in serious prejudice to his cause and violation of his fundamental right to equality guaranteed under Article 14 of the Constitution.

Learned counsel for the respondents submitted that even though while disposing of Writ Petition No. 16705 of 1986, this Court had directed allotment of alternative site to the owners of the properties, the authorities could not allot alternative site to the appellant because of the non-availability of land and this is the reason why the property of the appellant would be acquired by following the procedure prescribed by law.

We have considered the arguments of the learned counsel and carefully perused the record.

In paragraph 4 of the writ petition filed by him, the appellant averred that when respondents 1 and 2 took up the road widening programme in 1986, the same was vehemently resisted by the Members of the Legislative Assembly who were negotiating with the property owners for purchase of the properties at low rates. Thereupon, a society comprising of shopkeepers of the affected area filed Writ Petition No.16705 of 1986. His parents also got impleaded themselves as parties in that writ petition. By an order dated 19.6.1987, this Court disposed of the writ petition

by directing the respondents 1 and 2 to frame a scheme to provide alternative site to the owners and to rehabilitate the tenants after acquiring the land of Mukkaram Jah Trust. According to the petitioners, benefit of that order was not extended to his parents and without any notice and without taking action in accordance with law, respondents 1 to 3 threatened to demolish the property. He pleaded that in terms of direction given by the Court on 19.6.1987, the respondents are duty bound to allot alternative site as a condition precedent to the demolition of the property.

The learned Single Judge considered appellant's prayer for issuance of a direction to respondents to give him benefit of order dated 19.6.1987 passed in Writ Petition No.16705 of 1986 but did not accept the same by observing that if the Municipal Corporation wants to take the property then it has to take appropriate action in accordance with the provisions contained in Sections 145 and 147 of the Hyderabad Municipal Corporation Act, 1955.

In our opinion, the appellant cannot complain of the non-compliance of the direction given by the Court on 19.6.1987 in Writ Petition No. 16705 of 1986. The remedy, if any, available to the appellant in the matter of non-compliance of that order is to file a petition under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, 1971.

We are further of the view that the learned single judge did not commit any error by not accepting the appellant's prayer for allotment of alternative site because as per the assertion made by the respondents, his property is not going to be demolished or disturbed without acquiring the same in accordance with the relevant provisions of law. As and when his property is acquired, the appellant shall become entitled to compensation. Therefore, he cannot seek direction for allotment of alternative site as of right.

For the reasons mentioned above, the appeal is dismissed.

However, it is made clear that the appellant shall be free to avail appropriate legal remedy in the matter of alleged non-compliance of the direction given by the Court in Writ petition No. 16705 of 1986.

G.S. SINGHVI,CJ

DATE: 15th December, 2005

C.Y. SOMAYAJULU,J

Pnb/vtv